

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

LETTERS PATENT APPEAL No 129 of 1998

in

FIRST APPEALNo 4895 of 1997

WITH

LETTERS PATENT APPEAL NO.134 OF 1998

For Approval and Signature:

Hon'ble MR.JUSTICE C.K.THAKKER and
MR.JUSTICE A.L.DAVE

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

KANUBHAI RATILAL CHHARA

Versus

SECRETARY TO GUJARAT STATE

Appearance:

MR RS SANJANWALA for Appellant

CORAM : MR.JUSTICE C.K.THAKKER and

MR.JUSTICE A.L.DAVE

Date of decision: 09/02/98

ORAL JUDGEMENT

1. Both these appeals arise out two First Appeals, being First Appeals 4895 of 1997 and 5374 of 1997.

2. Appellants are the original plaintiffs. They filed two suits, being Civil Suit No.7010 of 1991 and 5676 of 1996 for permanent injunction. The case of the plaintiffs was that they had purchased the property. Registered sale deeds were executed, pursuant to which they had become owners. It was also their case that even prior to execution of sale deed, they were in occupation and possession of the property as tenants.

3. After appreciating the evidence - documentary as well as oral - the Trial Court held that it was not proved by the plaintiffs that they had become owners by execution of sale deed, inasmuch as, prior to the sale deed in question, proceedings had been initiated under the Land Acquisition Act, 1894, notifications under Sections 4 and 6 were issued and award was also passed. Amount of compensation was paid to the owners. It was only thereafter that some transactions were sought to be entered into between the parties. The original claimants, who had lost their ownership rights due to acquisition of land under the provisions of the Land Acquisition Act, transferred the property to present plaintiffs. On overall assessment of evidence, the Trial Court held that the plaintiffs had failed to establish their ownership rights. In fact, according to the Court, the plaintiffs had made encroachment over the land and, hence, they were not entitled to any relief.

4. In two First Appeals, the learned Single Judge once again considered reasons recorded by the Trial Court. Submissions made by the learned counsel for the appellants were considered and findings arrived at by the Trial Court were confirmed.

5. It was argued before the learned Single Judge as well as before us that the land in question was different than the land acquired under the Land Acquisition Act. It was stated that, looking to the survey numbers of the land as also situation, it was abundantly clear that there was an error of fact and of law on the part of both the Courts in holding that the property was one and same.

6. In our opinion, it cannot be said that there is any infirmity in the order passed by the Trial Court or by the learned Single Judge. Considering the entire material on record, both the Courts came to the conclusion that old survey numbers were given new City Survey numbers and that the land in question was the

same. An argument was advanced before the Trial Court that there were some overwritings and the amount of award was not paid to the claimants. That argument was negatived by the Trial Court. In our opinion, it cannot be said that the learned Single Judge has committed any error of fact or law in appreciating the evidence on record and in not interfering with the finding recorded by the Trial Court, which was based on the documentary and oral evidence. We, therefore, do not find any reason to interfere with the order passed by the learned Single Judge and both these appeal deserve to be dismissed and are, accordingly, dismissed.

7. It was stated that one of the plaintiffs had sold the land to one M/s MMB Family Trust. MMB Family Trust, thus, is claiming a title through the plaintiff. When the said trust was sought to be dispossessed, it approached City Civil Court by filing a suit. Along with the plaint, an application for interim relief was made. That application was rejected by the Court. Against that order, M/s MMB Family Trust has filed Appeal from Order No.54 of 1994 with Civil Application for interim relief. The counsel stated that the said appeal is admitted and interim relief is granted. He, therefore, submitted that, on the one hand, the appellants will not be protected and their appeals will be dismissed, while on the other hand, a person claiming ownership right through appellants will be protected.

8. In our opinion, that cannot carry the case of the appellant any further. If M/s MMB Family Trust has obtained interim relief and is operative till today, an appropriate course will be to hear that case also. In our opinion, it would be in the interest of justice to pass an appropriate order in that matter also.

9. The office is, therefore, directed to place the papers of Appeal From Order No.54 of 1993 along with a copy of this order before the Honourable the Chief Justice for taking an appropriate action to place the matter before an appropriate Court as per direction of the Honourable the Chief Justice.

10. Both the appeals are summarily dismissed.

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